

10.8

APPENDIX IV

THE INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

We, STAUFFER CHEMICAL COMPANY; STAUFFER MANAGEMENT COMPANY; ICI AMERICAN HOLDINGS, INC.; MONSANTO COMPANY; ATLANTIC AVENUE ASSOCIATES, INC.; BOSTON EDISON COMPANY; THE BOYD CORPORATION; STEPHEN DAGATA and ADELINE DAGATA; MARY E. FITZGERALD and JOHN J. MULKERIN, as TRUSTEES OF THE NODRAER REALTY TRUST; HIRO K. GANGLANI and SUNDER K. GANGLANI; MICHAEL A. HOWLAND, individually and as TRUSTEE OF THE ATLANTIC AVENUE TRUST; LIPTON INDUSTRIES, INC.; RONALD F. LISS; MASSACHUSETTS BAY TRANSPORTATION AUTHORITY; RICHARD G. MIZZONI, METROPHANE ZAYKA, JR., NICHOLAS ZAYKA and PETER ZAYKA, as TRUSTEES OF THE AERO REALTY TRUST; PAUL X. O'NEILL and PHYLLIS O'NEILL, as TRUSTEES OF THE P.X. REALTY TRUST; PEBCO COMPANY; POSITIVE START REALTY, INC.; AUGUSTINE P. SHEEHY; PETER J. VOLPE; THE WELLES COMPANY; WINTER HILL STOREHOUSE, INC.; CITY OF WOBURN; and WOODCRAFT SUPPLY CORPORATION (collectively, the "Declarants"), pursuant to the terms of the Consent Decree in United States of America v. Stauffer Chemical Company, et al., Civil Action N. 89-0195-Mc, (D. Mass.) (the "Consent Decree") which mandates that we establish a Custodial Trust, and pursuant to the obligations which we have assumed under the Consent Decree and in consideration of having assumed said obligations, as of this \_\_\_\_\_ day of April, 1989, hereby declare Resources for Responsible Site Management, Inc. ("RRSM") to be Trustee (the

"Trustee"), and said RRSM agrees to act as Trustee and to hold and dispose of property transferred to the Trustee pursuant to the terms of the Consent Decree and all additions thereto in accordance with the terms of this instrument.

## ARTICLE I

### DEFINITIONS

Incorporation of Certain Definitions. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Consent Decree.

## ARTICLE II

### NAME AND PURPOSE OF TRUST; ACCEPTANCE AND ESTABLISHMENT OF TRUST

2.01 Name. This Trust shall be known as "The Industri-Plex Site Interim Custodial Trust" (hereinafter sometimes referred to as "this Trust").

2.02 Trust Purpose. The purpose of this Trust is to hold and manage property transferred to it, pursuant to and to satisfy and implement the provisions of the Consent Decree, to arrange for the sale of as much of the real estate of the trust as may be salable, to distribute the proceeds of such sales as described herein and to facilitate the transfer of any remaining real estate and other trust property as described herein. It is not the objective or purpose of this Trust to carry on a business and/or divide the gains therefrom.

2.03 No Deemed Transfers. By signing this instrument, no Declarant shall be deemed to have transferred or abandoned any

property, interest in property, or rights in property currently owned by Declarants.

2.04 Acceptance of Trust. By executing this Trust Agreement, the Trustee hereby accepts the trust, duties, obligations and requirements specifically imposed on it by this Agreement, the fiduciary trust obligations established by the laws of the Commonwealth of Massachusetts, and agrees to carry out and perform, punctually, such duties, obligations, and requirements (and only such duties, obligations and requirements) as set forth in this Trust.

2.05 Date of Establishment of Trust. This Trust shall be established and become effective when all Declarants have executed this Trust Agreement and it has been accepted by the Trustee.

### ARTICLE III

#### DUTIES OF THE TRUSTEE

3.01 Mark-Phillip Trust Property. The Trustee shall:

(a) receive and hold title to the real estate transferred to it from the Mark-Phillip Trust and William A. D'Annolfo (the "MPT Property" as defined in the Consent Decree) pursuant to Article IX B. of the Consent Decree;

(b) sell all salable parcels of the MPT Property in accordance with Section 3.03 hereof;

(c) distribute the proceeds of sale of any parcel of the MPT Property in accordance with Section 4.02 hereof;

(d) inaugurate and, during its period of ownership, comply with the Institutional Controls on all MPT Property in accordance with Section X of the Consent Decree;

(e) provide access to such property in accordance with Section XV A. of the Consent Decree;

(f) employ all reasonable measures to prevent unauthorized entry upon or use of the real property in its possession or control;

(g) adequately insure the real property against loss due to casualty or third party liability;

(h) neither conduct nor allow others to conduct any activity on the MPT Property other than the performance of the Work or other activities required or permitted by the Consent Decree; and

(i) comply with all relevant Sections of the Consent Decree and the Settlers under the Consent Decree other than the Mark-Phillip Trust shall have the right and power to compel the Trustee to so comply.

### 3.02 Operating Expenses.

(a) Immediately following acceptance of the Trust the Custodial Trustee shall notify the Trustee of the Industri-Plex Site Remedial Trust established by the Consent Decree (respectively the "Remedial Trustee" and the "Remedial Trust") and request initial funding in the sum of \$50,000 (the "Initial Operating Funding"). The Trustee shall be required to take no action until the Trustee shall be in receipt of the Initial

Operating Funding. The Initial Operating Funding may be applied to expenses incurred by the Trustee in advance of acceptance for legal fees and expenses, provided such fees do not exceed \$25,000. The Initial Operating Funding shall be used for operation of this Trust (including but not limited to administrative expenses, costs of insurance and expenses of complying with the Consent Decree) for the period through the first 120 days of operation.

(b) Within 90 days of receipt of the Initial Operating Funding and every 90 days thereafter, the Trustee shall notify the Remedial Trustee of the estimated costs of operation (including a reasonable contingency fund) for subsequent 120 day periods of operation which cannot be paid from the Initial Operating Funding or other assets of the Trust. The Trustee shall in each such notification request that the Remedial Trustee pay those expenses which are not incurred in connection with the sale of MPT Property, and advance as interest free loans that amount which is related to the sale of the MPT Property to this Trust within 30 days of such notification. The Trustee shall provide the Remedial Trustee with a full accounting of the use of the Initial Operating Funding, including whether its use warrants its categorization as an advance or as a payment.

(c) In the event that the Trustee at any time determines that it is in possession of insufficient funding to carry out any of its required duties under the Custodial Trust and believes that the above specified funding procedures would

not likely result in timely receipt of the necessary funding, the Trustee shall simultaneously notify both the Remedial Trustee and the members or designated representatives of the Management Committee established pursuant to the Remedial Trust of the amount of funds needed, as well as the purposes and urgency thereof.

(d) RRSB shall be compensated for its activities as Trustee in accordance with the schedule contained in Exhibit I hereto.

3.03 Sale of MPT Property. Subject to the notice and approval provisions of Section IX D. of the Consent Decree, the Trustee shall sell all of the salable portions of the MPT Property at such times and upon such terms as the Trustee determines to be appropriate. The Trustee is specifically authorized to pursue a sale of all of the MPT Property to a single buyer, even if the proceeds of such sale would be less than the proceeds which might be realized through the sale of such property in parcels. All of the salable portions of the MPT Property shall be sold not later than four years from the date of certification of completion of the Work, unless a longer period of time is agreed to by Monsanto Company ("Monsanto") and ICI American Holdings, Inc. ("ICI"). The Trustee shall not sell any MPT Property without obtaining the prior written approval for such sale from Monsanto and ICI. Monsanto and ICI are the only Declarants who shall have any right or authority to approve such extension of time and/or such sale or sales, and in exercising

such right or authority Monsanto and ICI shall not act as agents or representatives of any of the other Declarants. Upon each such sale, the Trustee shall provide copies of the closing documents to the Remedial Trustee and all other entities as required by Section IX D. of the Consent Decree.

3.04 Application for Tax Abatements. The Trustee shall make all necessary applications for abatements from property taxation and provide such additional information to the City of Woburn, Massachusetts (the "City") as is necessary to insure that the City does assess and continues to assess the MPT Property at zero or at such other value or in such other manner or form that no real estate tax liability is imposed on the MPT Property.

3.05 Long-Term Custodial Fund. If any of the MPT Property is deemed unsalable pursuant to Section 4.01 hereof, after the sale of all other portions of the MPT Property, the Trustee shall estimate the amount, not provided for by other sources, necessary to provide adequately for the custodial care of the unsalable property, including but not limited to trustee's fees and expenses, insurance, maintenance, and security. The Trustee shall submit a proposed statement of that estimated amount, including an explanation of the expenses that the Trustee believes should be funded, the projected levels of such expenses over time, and the bases for its projections, to the Remedial Trustee, EPA, and the Commonwealth. The Trustee shall revise the Statement as necessary until the Statement is approved by EPA and the Commonwealth; provided that the Trustee shall not be required

to recommend a lower level of funding for custodial care of the unsalable property than the Trustee deems appropriate.

#### ARTICLE IV

##### DISTRIBUTION OF TRUST PROPERTY AND TERMINATION OF TRUST

4.01 Unsalable Property. If the Trustee determines that any of the MPT Property is not salable, the Trustee shall submit to the Remedial Trustee, EPA, and the Commonwealth a report describing such property, its efforts to sell the property, and its reasons for concluding that the property is not salable. If EPA or the Commonwealth disagrees with the Trustee's determination as to any of such property, the Trustee shall make further appropriate efforts to sell the property not agreed to be unsalable and shall report its further efforts and the results thereof to EPA and the Commonwealth. If EPA, the Commonwealth, and the Trustee agree that all reasonable efforts have been made to sell any MPT Property remaining in the Trustee's possession, such property shall be deemed unsalable and the Trustee shall establish a Long-Term Custodial Trust by instrument in the form attached as Exhibit I hereto and shall distribute the unsalable property to the trustee of such trust to be held and administered as an integral part thereof.

4.02 Proceeds of Sale of MPT Property. The net proceeds (as defined in Section IX D. of the Consent Decree) from the sale of each portion of the MPT Property shall be distributed upon receipt in the amounts and in the order listed as follows:



(a) ten percent (10%) of the first \$3,000,000 of such proceeds and ten percent (10%) of such proceeds in excess of \$10,000,000, up to a total of \$645,000, to the City, as provided in Section IX D. of the Consent Decree;

(b) the outstanding balance of advances to this Trust from the Remedial Trust related to the property sold to the Remedial Trustee as repayment of such advances;

(c) the balance of such proceeds to the Mercantile Trust Company, N.A., of Saint Louis, Missouri, (the "Escrow Agent"), to be held, administered and distributed in accordance with the terms of an escrow agreement entered into pursuant to the Consent Decree by the Declarants and the Escrow Agent (the "Escrow Agreement").

#### 4.03 Final Distribution and Termination of Trust.

Following the sale of distribution of all of the MPT Property and the distributions in 4.01 and 4.02 this Trust shall terminate and the balance of the trust property shall be distributed to the Escrow Agent to be held, administered and distributed according to the terms of the Escrow Agreement.

### ARTICLE V

#### RETENTION OF PROFESSIONAL AND OTHER SERVICES

5.01 Accountants. The Trustee shall employ an independent certified public accounting firm or individual to perform auditing and accounting services for this Trust (the "Accountants"). Such services may include, without limitation,

(a) the preparation of reports; (b) the auditing of invoices; and  
(c) the provision of advice to the Trustee as to the payment of  
the audited invoices and claims.

5.02 Retention and Removal of Other Professional and  
Employee Services. The Trustee may employ such attorneys,  
accountants, custodians, engineers, surveyors, contractors,  
clerks, investment counsel and agents or employees (including any  
firm or entity in which it may have an interest); lease from  
others, furnish, operate and maintain office space; and make such  
payments therefor as it shall deem reasonable for the  
implementation of the purposes of this Trust.

## ARTICLE VI

### TRUSTEE'S POWERS

The Trustee shall have, in addition to those powers  
specified elsewhere herein and the general powers of the office,  
the following powers, which powers shall be exercised in a  
fiduciary capacity, in the best interest of this Trust and in the  
sole discretion of the Trustee unless otherwise specified:

6.01 Payment of Expenses of Administration. To incur  
and pay any and all charges, taxes and expenses upon or connected  
with this Trust in the discharge of its fiduciary obligations and  
to borrow money on such terms and conditions as the Trustee  
determines to be appropriate in order to pay such charges, taxes  
and expenses, provided, however, that the Trustee shall not be

required to pay taxes to the City except as provided in Section 4.02(a).

6.02 Retention of Property. To hold and retain all or any part of the trust property in the form in which the same may be at the time of the receipt by the Trustee, as long as it shall deem advisable, notwithstanding that the same may not be authorized by the laws of any state or rules of any court for the investment of trust funds, and without any liability for any loss of principal or income by reason of such retention.

6.03 Preservation of Principal. Notwithstanding any other provision in this Trust, to at all times hold, manage and invest the non-real estate assets of this Trust in a manner designed to preserve the principal of such assets and, consistent with preservation of the principal of such assets, to maximize the principal and income derived therefrom, for the purposes of this Trust.

6.04 Investment of Trust Fund. To invest and reinvest all or any part of the trust property (including any undistributed income therefrom), other than the MPT Property, (the "Custodial Trust Fund") as the Trustee deems advisable except that such investments shall be limited to investments in United States direct obligations, obligation guaranteed by agencies of the United States government, common trust funds or mutual funds that invest in United States direct or guaranteed obligations, bank certificates of deposit to the extent such are insured by the federal government. In all cases, however, the

total investments must be sufficiently liquid to enable the Trust to fulfill the purposes of the Trust and to satisfy obligations as they become due. Nothing in this Section 6.04 shall be construed as authorizing the Trustee to carry on any business or to divide the gains therefrom. The sole purpose of this Section 6.04 is to authorize the investment of the Custodial Trust Fund or any part thereof as may be reasonably prudent pending use of the Custodial Trust Fund for the purpose of this Trust.

6.05 Management of Custodial Trust Fund. As may be incidental or advisable in connection with the purposes of this Trust as set forth in Section 2.02, and subject to the other provisions of this Trust and the Consent Decree, to sell, exchange, partition or otherwise dispose of all or any part of the Custodial Trust Fund at public or private sale, without prior application to or approval by or order of any court, upon such terms and in such manner and at such prices as the Trustee shall determine.

6.06 Extension of Obligations and Negotiations of Claims. To renew or extend the time of payment of any obligations, secured or unsecured, payable to or by this Trust, for as long a period or periods of time and on such terms as the Trustee shall determine; and to adjust, settle, compromise, abandon, contest and arbitrate claims or demands in favor of or against this Trust, including claims for taxes, upon such terms as it deems advisable.

6.07 Location of Assets. To hold any property belonging to this Trust at any place in the United States.

6.08 Authority to Represent Trust Before Agencies. To represent this Trust with regard to any matter concerning this Trust or its purpose before any federal, state or local agency or authority which has authority or attempts to exercise authority over any matter which concerns this Trust, and to invoke the dispute resolution procedure pursuant to Section XXII of the Consent Decree.

6.09 Powers Regarding Real Estate. Subject to the provisions of the Consent Decree and other provisions of this Trust, including but not limited to Article III, the Trustee may retain all or any part of any real estate (or interest therein) that becomes part of the trust property (the "real estate") for such period as the Trustee deems advisable and shall pay all taxes and assessments on the real estate (provided, however, that the Trustee shall not be required to pay any taxes or assessments to the City except as provided in Section 4.02(a)), maintain it (reasonable use and wear, fire and unavoidable casualty excepted) and insure it against risks in such amounts as the Trustee deems advisable and in such amounts as are approved by EPA and the Commonwealth (which approval shall not be unreasonably withheld). In addition to all other powers conferred by law or other provisions of this Trust, and also subject to the provisions of the Consent Decree and other provisions of this Trust, the Trustee shall have the following powers which may be exercised

without court approval to the extent permitted by law to any ordinary landowner:

(a) To grant options and make other contracts concerning the real estate (whether or not extending beyond the term of any trust);

(b) To subdivide the real estate and dedicate streets or other ways for public use with or without compensation;

(c) To impose easements or other restrictions; and donate the unsalable real estate to charitable or public uses;

(d) To execute and deliver all appropriate instruments and discharge mortgages of record;

(e) To record in the appropriate Registry of Deeds any instrument, including any certificate acknowledged by the Trustee as to any fact concerning the real estate; and any person without actual knowledge to the contrary may rely conclusively on the genuineness of any such instrument and on the correctness of any such certificate.

No person dealing with the real estate shall be required to see to the application of any money or property delivered to the Trustee, or to see that the terms and conditions of this trust have been complied with. Every instrument executed or action taken by the person or entity appearing to be the Trustee shall be conclusive evidence that this trust was in full force and effect when the instrument was delivered or the action was taken; that such person or entity was the Trustee; and that such instrument or action was valid and legally binding.

6.10 Powers of Trustee to Continue Until Final Distribution. To exercise any of such powers until such time as the entire principal of, and income from, the Custodial Trust Fund has been actually distributed by the Trustee and all trust property has been sold or otherwise disposed of.

6.11 Discretion in Exercise of Powers. To do any and all other acts which it shall deem proper to effectuate the powers specifically conferred upon it by this Trust.

6.12 Reliance of Purchasers and Others. No license of court shall be requisite to the validity of any transaction entered into by the Trustee. No purchaser, transferee or lender shall be under any obligation to see to the application of the purchase money or of any money or property loaned or delivered to any Trustee or to see that the terms and conditions of this Trust have been complied with. Every agreement, deed or other instrument or document executed or action taken by the Trustee or any successor or additional Trustee, shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of the delivery thereof or of the taking of such action this Trust was in full force and effect and that such instrument or document or action is valid, binding and legally enforceable. Any person dealing with the trust property or the Trustee may always rely without inquiry on a certificate signed as aforesaid as to who is the Trustee or Trustees or the beneficiaries hereunder, or as to the authority of the Trustee to act, or as to the existence or nonexistence of any fact or facts which constitute conditions precedent to acts by the Trustee or which are in any other manner germane to the affairs of the Trust.

6.13 Nothing in this Article or in this Trust shall be construed as authorizing the Trustee to carry on any business and/or divide the gains therefrom.

## ARTICLE VII

### ACCOUNTS AND RECORDS

7.01 Separate Records to be Kept. The Trustee shall keep, or direct the Accountants, if any, to keep, proper books of records and accounts, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the trust property.

7.02 Reports.

(a) Within 30 days of the close of each calendar quarter, the Trustee shall present to the Remedial Trustee a statement of (i) the balance of the trust property at the beginning of such quarter, (ii) the receipts for such quarter, (iii) the distributions and other disbursements for such quarter and (iv) the balance of the trust property (including an itemized list of assets) at the end of such quarter. In addition, by each March 31, the Trustee shall present to the Remedial Trustee, EPA and the Commonwealth an annual statement for the prior year ended December 31 of (i) the balance of the trust property at the beginning of such year, (ii) the receipts for such year, (iii) the distributions and disbursements for such year and (iv) the balance of the trust property (including an itemized list of assets) at the end of such year, accompanied by a report of the



Accountants stating that an audit of such financial statements has been made in accordance with generally accepted auditing standards, stating the opinion of such Accountants with respect to the financial statements and the accounting principles and practices reflected therein and as to the consistency of the application of the accounting principles, and identifying any matters to which such Accountants take exception and stating, to the extent practicable, the effect of such exception on such statements.

(b) Within 30 days of the close of each calendar quarter, the Trustee shall report to the Remedial Trustee with the status of the Trustee's (1) inauguration of and compliance with any required Institutional Controls on its real property within the Site and (2) progress toward the sale of salable parcels.

7.03 Right to Inspect. The Remedial Trustee, EPA or the Commonwealth or their designated agent or agents, shall have the right at all reasonable times and upon reasonable notice to inspect all records, accounts, and data of the Trustee relating to the trust property.

## **ARTICLE VIII**

### **CONDITIONS OF TRUSTEE'S OBLIGATIONS**

The Trustee accepts the Trust imposed upon it but only upon and subject to the following express terms and conditions:

8.01 Limitation of Liability. In no event shall the Trustee be liable to the beneficiaries except for its negligence, gross negligence, bad faith or willful misconduct in relation to its duties under this Trust. The Trustee shall have no responsibility hereunder except to the extent of its duties expressly placed upon the Trustee as required by this Trust, or otherwise assumed by the Trustee, to the extent funds for such purposes are received by the Trustee, to comply with this Agreement and applicable terms of the Consent Decree.

8.02 Reliance on Documentation. The Trustee shall be protected in acting in accordance with the provisions of this Trust upon any notice, requisition, request, consent, certificate, order, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and to have been signed or sent by the proper person or persons.

8.03 Receipt of Information and Right to Demand Documentation.

(a) The Trustee shall review, consider and maintain all information provided to it by the Remedial Trustee and/or the Management Committee related to its duties under this Trust. Such information shall include, but is not limited to, the information identified in the Consent Decree in Articles VIIE., XIII, XVIB., and XVII thereto.

(b) Notwithstanding anything else in this Trust, in the administration of the Custodial Trust Fund, the Trustee shall have the right, but shall not be required, to demand before the

disbursement of any cash or in respect of any action whatsoever within the purview of this Trust, any showings, certificates, opinions, appraisals, or other information, action, or evidence thereof, in addition to that required by the terms hereof which the Trustee reasonably believes to be necessary or desirable.

8.04 Limitation on Financial Liability. No provision of this Trust shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties as Trustee hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it, nor to take any action pursuant to this Trust, which in the reasonable judgment of the Trustee may conflict with any rule of law or with the terms of this Trust.

## ARTICLE IX

### SUCCESSOR TRUSTEES

9.01 Resignation of Trustee. Any Trustee may resign by giving not less than 60 days written notice to the Remedial Trustee, and such resignation shall take effect upon the day specified in such notice, unless a successor Trustee shall have been sooner appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of a successor Trustee. If any individual Trustee becomes mentally or physically unable to serve, a certificate so

stating from such Trustee's then attending physician shall constitute such Trustee's resignation. If any Trustee shall be dissolved or in the course of dissolution or liquidation, or otherwise unable to continue to act as Trustee, as finally determined by the Remedial Trustee, a certificate so stating from the Remedial Trustee shall constitute such Trustee's resignation. The Trustee's resignation shall be recorded with the Registry (as defined below) immediately prior to the recording of the successor Trustee's acceptance or upon the effective date of resignation, whichever is earlier.

"Registry" as used herein shall mean the Middlesex County (Massachusetts) Southern District Registry of Deeds; provided that if this Trust is recorded or filed for registration in any other public office within or without the Commonwealth of Massachusetts, any person dealing with portions or all of the trust property as to which documents or instruments are recorded or filed for registration in such other public office in order to constitute notice to persons not parties thereto may rely on the state of the record with respect to this Trust in such other public office, and with respect to such portions or all of the trust property the term "Registry" as used herein shall mean such other public office.

9.02 Appointment of Successor Trustee. If RRSM or any successor Trustee ceases to serve as Trustee, a successor Trustee may be appointed by the Remedial Trustee by an instrument in writing, signed by the Remedial Trustee, and delivered to the

successor Trustee. In the event that no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article, within 60 days after a vacancy shall have occurred, any interested person and/or any retiring Trustee may apply to any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice, if any, as it shall deem proper, prescribe or appoint a successor Trustee. Each successor Trustee shall qualify upon written acceptance attached hereto and recorded with the Registry and thereafter shall have the same powers, immunities and discretions as the original Trustee.

9.03 Transfer to Successor Trustee. Upon any successor Trustee's qualification, as provided in 9.02, such successor Trustee, without any further act, deed, or conveyance, shall become fully vested with all the estates, rights, powers, trusts, duties and other obligations hereunder of its predecessor; but such predecessor shall nevertheless, upon written request of the successor Trustee, execute and deliver an instrument transferring to such successor Trustee all the estates, rights, powers, and trusts of such predecessor; and every predecessor Trustee shall deliver all securities and money held by it to its successor, provided, however, that before any such delivery is required or made, all legally accrued fees, advances and expenses of any such predecessor Trustee, as provided by Section 3.02(d) of this Agreement, shall be paid in full.

9.04 Merger or Consolidation of Trustee. Any corporation or association into which the Trustee or any successor to it may be merged or converted, or with which it or any successor to it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Trustee or any successor to it shall be a party, shall be a successor Trustee under this Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, notwithstanding anything to the contrary herein.

## ARTICLE X

### MISCELLANEOUS

10.01 Particular Words. Any word contained in the text of this Trust shall be read as a singular or plural and a masculine, feminine or neuter as may be applicable or permissible in the particular context. Unless otherwise specifically stated the word "person" shall be taken to mean and include an individual, partnership, association, company or corporation.

10.02 Severability of Provisions. If any provision of this Trust or its application to any person or entity or in any circumstances shall be invalid and unenforceable, the application of such provision to persons or entities and in circumstances other than those as to which it is invalid or unenforceable and the other provisions of this Agreement, shall not be affected by such invalidity or unenforceability.

10.03 Governing Jurisdiction. This Trust shall be enforceable in the United States District Court for the District of Massachusetts or any other court of competent jurisdiction in the Commonwealth of Massachusetts. The validity, interpretation and performance of this Trust shall be governed by the laws of the Commonwealth of Massachusetts.

10.04 Construction of Terms. In the event of any ambiguity or contradiction in the terms of this Trust, such terms shall be construed so as to conform to the provisions of the Consent Decree, where applicable, and so as to fulfill the purposes of this Trust.

10.05 No Transferability of Interest in the Trust. The interest of any beneficiary in this Trust is not transferable except to a successor of such beneficiary.

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf on the forms attached hereto and Resources for Responsible Site Management, Inc. as Trustee, by its duly authorized officer accepts this trust, all as of the day and year first above written.

RESOURCES FOR RESPONSIBLE SITE  
MANAGEMENT, INC.

By: 

Name: CHARLES W. POWERS

Title: PRESIDENT, RRS M

Date: 5/8/85

Address: 264 Beacon St.  
Boston, Mass  
02146



INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT: Stauffer Chemical Company  
Company Name

By: Gary L. Ford  
Name: Gary L. Ford  
Title: Assistant Director of Law  
Address: one Corporate Drive, Box 881  
Shelton, Ct. 06484  
Tax I.D. NO.: 51-0301977  
STATE OF CONNECTICUT  
~~COMMONWEALTH OF MASSACHUSETTS~~

COUNTY OF FAIRFIELDSS

May 1 ~~April~~, 1989

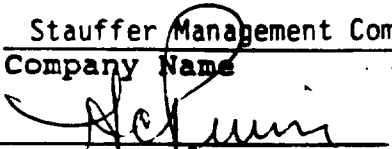
Then personally appeared the above-named Gary Ford  
and acknowledged the foregoing to be his free act and deed as  
Assistant Dir of Law as aforesaid, before me,

Carol G. Gemmell  
Notary Public  
My Commission Expires:  
My Commission Expires Apr. 31, 1991.

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT: Stauffer Management Company  
Company Name

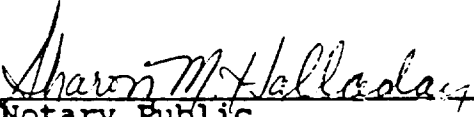
By:   
Name: A. C. Perrino  
Title: Vice President  
Address: Wilmington, DE 19897

Tax I.D. No.: 51-0301988

STATE OF DELAWARE  
NEW CASTLE COUNTY , SS

MAY 1 , 1989

Then personally appeared the above-named A. C. Perrino  
and acknowledged the foregoing to be his free act and deed as  
Vice President as aforesaid, before me,

  
Notary Public  
My Commission Expires: 6-17-90

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT: ICI American Holdings Inc.  
Company Name

By: J. K. Riegel  
Name: J. K. Riegel  
Title: Vice President  
Address: Wilmington, DE 19897

Tax I.D. No.: 51-0112321

STATE OF DELAWARE  
NEW CASTLE COUNTY , SS

MAY 1 , 1989

Then personally appeared the above-named J. KENT RIEGEL  
and acknowledged the foregoing to be his free act and deed as  
Vice President as aforesaid, before me,

James L. Hill  
Notary Public  
My Commission Expires: 3-17-90

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT:

Monsanto Company  
Company Name

By: 

Name: W. W. Varnado

Title: Director, Remedial Projects

Address: 800 N. Lindbergh Boulevard

St. Louis, MO 63167

Tax I.D. No.: 430420020

~~COMMONWEALTH OF MASSACHUSETTS~~ STATE OF MISSOURI

, ss

April 27, 1989

Then personally appeared the above-named Varnado  
and acknowledged the foregoing to be his free act and deed as  
Dir., Remedial Projects as aforesaid, before me,

  
Notary Public

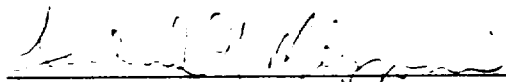
My Commission Expires:

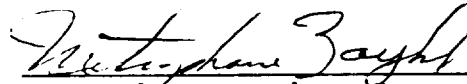
July 2, 1990

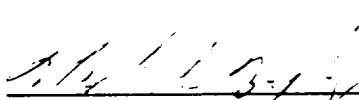
INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

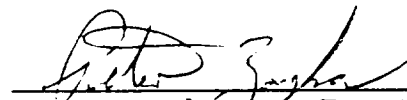
IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

AERO REALTY TRUST, u/d/t 9-10-82, Middlesex So. Registry District of the Land Court, Doc. No. 630396

  
Richard G. Mizzone, as Trustee  
and not individually

  
Metrophane Zayka, Jr., as  
Trustee and not individually

  
Nicholas Zayka, as Trustee  
and not individually

  
Peter Zayka, as Trustee  
and not individually

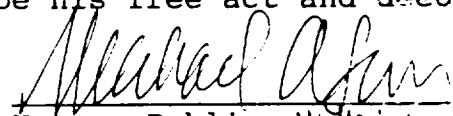
Address: 223 New Boston Street, Woburn, MA 01801  
Tax ID No.:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

April 29, 1989

Then personally appeared the above-named Richard G. Mizzone and acknowledged the foregoing to be his free act and deed as Trustee as aforesaid, before me,

  
Notary Public Michael A. Leon  
My Commission Expires: 2-16-90

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT:

Boston Edison Company  
Company Name

By: C. Bruce Damrell  
Name: C. Bruce Damrell  
Title: Vice President  
Address: 800 Boylston Street  
Boston, MA 02199  
Tax I.D. No.: 04-1278810

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

May 4, 1989

~~XXXXXX~~ 1989

Then personally appeared the above-named C. Bruce Damrell  
and acknowledged the foregoing to be his free act and deed as  
Vice President as aforesaid, before me,

[Signature]  
Notary Public

My Commission Expires: 4/15/91

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT:

THE BOYD CORPORATION  
Company Name

By:

Name: JAMES C. BOYD

Title: PRESIDENT

Address: 112 COMMERCE WAY  
WOBURN, MA 01801

Tax I.D. No.: 01-00335-00

COMMONWEALTH OF MASSACHUSETTS

Notary Public, ss Boyd

1989  
April 3, 1989

Then personally appeared the above-named James C. Boyd  
and acknowledged the foregoing to be his free act and deed as  
\_\_\_\_\_ as aforesaid, before me,

Notary Public

My Commission Expires:

MASSACHUSETTS, DECEMBER 31, 1989

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT: Stephen & Adeline Dagata

Company Name

By: Stephen Dagata  
Name: Stephen Dagata  
Title: Co-owner  
Address: 59 Montvale Road  
Woburn, Mass. 01801

Tax I.D. No.: Stephen 014-18-8461  
Adeline 029-12-4169

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

May 3,

~~APRIL~~, 1989

Then personally appeared the above-named Stephen Dagata  
and acknowledged the foregoing to be his free act and deed as  
as aforesaid, before me,

Charles P. Pine  
Notary Public

My Commission Expires: March 22, 1996



INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT: SUNDER K. GANGLANI & HIRD K. GANGLANI  
Company Name

By: SUNDER K. Ganglani [Signature]  
Name:  
Title:  
Address:

Tax I.D. No.:

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex ss

May  
April 4, 1989

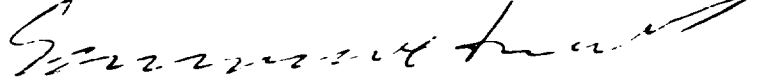
Then personally appeared the above-named SUNDER K. GANGLANI  
and acknowledged the foregoing to be his free act and deed as H. K. GANGLANI  
as aforesaid, before me,

[Signature]  
Notary Public  
My Commission Expires: 9/9/94

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT: The Atlantic Avenue Trust

By: <sup>AK</sup> ✓ 

Name: Michael A. Howland

Title: Trustee, Atlantic Avenue Trust

Address: 155 West Street  
Wilmington, Massachusetts 01887

Tax I.D. No.: \_\_\_\_\_

Middlesex

COMMONWEALTH OF MASSACHUSETTS

, ss

May 3, 1989

Then personally appeared the above-named Michael A. Howland, Trustee, and acknowledged the foregoing to be the free act and deed of the Atlantic Avenue Trust before me,

  
\_\_\_\_\_  
Notary public  
My commission expires:

MARY ANN CHEVOOR  
Notary Public  
My Commission Expires August 21 1993

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

By: 

Name: Michael A. Howland

Address: 155 West Street  
Wilmington, Massachusetts 01887

Tax I.D. No.: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Middlesex

, ss

May 3, 1989

Then personally appeared the above-named Michael A. Howland and acknowledged the foregoing to be his free act and deed before me,



Notary public

My commission expires:

MARY ANN CHEVOOR

Notary Public

My Commission Expires August 21 1993

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT: Lipton Industries, Inc.  
Company Name

By: *D. W. St. Clair*  
Name: D. W. St. Clair  
Title: Vice President  
Address: 800 Sylvan Avenue  
Englewood Cliffs, NJ 07632  
Tax I.D. No.: 22-1900654

STATE OF NEW JERSEY

, ss

May 4 , 1989

Then personally appeared the above-named D. W. St. Clair  
and acknowledged the foregoing to be his free act and deed as  
Vice President as aforesaid, before me,

*Alice O. Allen*  
Notary Public  
My Commission Expires:

ALICE O. ALLEN  
NOTARY PUBLIC OF NEW JERSEY  
Qualified in Bergen County  
My Commission Expires April 24, 1990

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT: Ronald F. Liss

~~Company-Name~~

By: Ronald F. Liss

Name: Ronald F. Liss

Title: Donor

Address: 255 Andover Street, P.O.Box 695  
Wilmington, MA 01887

Tax I.D. No.: 029-28-6209

COMMONWEALTH OF MASSACHUSETTS

, ss

April , 1989

Then personally appeared the above-named Ronald F. Liss  
and acknowledged the foregoing to be his free act and deed as  
as aforesaid, before me,

Mortimer H. Walsh Jr.  
Notary Public

My Commission Expires:

February 8, 1991

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT: Massachusetts Bay Transportation Authority  
Company Name

By: Gregory C. Flynn  
Name:  
Title: General Counsel  
Address: 10 Park Plaza  
Boston, Mass.  
Tax I.D. No.:

Exempt  
COMMONWEALTH OF MASSACHUSETTS

Suffolk

, ss

May 8,  
April, 1989

Then personally appeared the above-named Gregory C. Flynn  
and acknowledged the foregoing to be his free act and deed as  
General Counsel as aforesaid, before me,

Virginia L. Branner  
Notary Public  
My Commission Expires: 3/26/93

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT: Nodraer Realty Trust

Company Name

By: 

Name: John J. Mulkerin

Title: Trustee

Address: 120 Commerce Way, Woburn, MA 01801

Tax I.D. No.: 04-2438121

COMMONWEALTH OF MASSACHUSETTS

, ss

MAY 3

, 1989

Then personally appeared the above-named John J. Mulkerin  
and acknowledged the foregoing to be his free act and deed as  
TRUSTEE as aforesaid, before me,



Notary Public

My Commission Expires: June 1, 1990

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT: PEBCO  
Company Name  
 BOSTON SAFE DEPOSIT AND TRUST COMPANY  
 By: Dina G. Cirone  
 Name: Dina G. Cirone  
 Title: Trust Officer  
 Address: One Boston Pl. OBVJ  
 Boston, MA 02108  
 Tax I.D. No.: 04-2518589

## COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS

May 4, 1989  
April , 1989

Then personally appeared the above-named Dina G. Cirone  
and acknowledged the foregoing to be his free act and deed as xx of Pebco  
                     as aforesaid, before me,

Notary Public

**My Commission Expires:**

JEANNE M. HESSON, Notary Public  
My Commission Expires Oct. 24, 1991



INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT:

POSITIVE START REALTY, INC.  
Company Name

By: x

Robert De Rosa

Name: ROBERT DE ROSA

Title: PRESIDENT

Address: 8 CLINTON ST., WOBURN, MA

Tax I.D. No.: 04-2809008

COMMONWEALTH OF MASSACHUSETTS

M. DOLAN, SS

MAY  
April 5, 1989

Then personally appeared the above-named ROBERT DE ROSA  
and acknowledged the foregoing to be his free act and deed as  
PRESIDENT as aforesaid, before me,

Gerald J. [Signature]  
Notary Public

My Commission Expires:

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT:

PX Realty Trust  
Company Name

By: Paul X. O'Neill

Name: PAUL X. O'NEILL

Title: TRUSTEE

Address: 10 HUNTINGDON RD.  
LYNNFIELD, MA. 01940

Tax I.D. No.: 04-2548192

COMMONWEALTH OF MASSACHUSETTS

, ss

May 4  
~~April~~, 1989

Then personally appeared the above-named PAUL  
and acknowledged the foregoing to be his free act and deed as  
X. O'Neill as aforesaid, before me,

[Signature]

Notary Public

My Commission Expires:

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT:

PETER J VOLPE  
Company Name

By: [Signature]

Name: PETER J VOLPE

Title: GENERAL MGR

Address: 54 EASTERN AVE, MALDEN, MA 02148

Tax I.D. No.: 04-8352632

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX

, SS

MAY 3

April , 1989

Then personally appeared the above-named GEN MGR  
and acknowledged the foregoing to be his free act and deed as  
PETER J VOLPE as aforesaid, before me,

Flora E. Roubili

Notary Public

My Commission Expires:

7/26/89

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT: The Welles Company, a Massachusetts limited partnership,  
Woodcraft Supply Corporation, a Massachusetts corporation,  
Atlantic Avenue Associates, Inc., a Massachusetts corporation  
Company Name

By: Rogers G. Welles  
Name: Rogers G. Welles  
Title: President and General Partner  
Address: 201 Airway West  
Tequesta, FL 33469  
Tax I.D. No.: 04-3023020

COMMONWEALTH OF MASSACHUSETTS

Notary Public, ss

April 25, 1989

Then personally appeared the above-named Rogers G. Welles  
and acknowledged the foregoing to be his free act and deed as  
Notary Public as aforesaid, before me,

Notary Public  
Notary Public

My Commission Expires: 1990

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT: Winterhill Storehouse Inc.

Company Name

By: Richard D. Bain

Name: Richard D Bain

Title: President

Address: 20 Atlantic Ave. Woburn, Ma. 01801

Tax I.D. No.: 04 2457959

COMMONWEALTH OF MASSACHUSETTS

Middlesex , ss County

May 4, 1989

April , 1989

Then personally appeared the above-named Richard D Bain  
and acknowledged the foregoing to be his free act and deed as  
President as aforesaid, before me,

William Bennett  
Notary Public

My Commission Expires: March 19 1993

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT: CITY of Woburn  
Company Name

By: [Signature]  
Name: JOHN W. RABBITI  
Title: Mayor  
Address: Woburn, MA 01801  
Tax I.D. No.: 046 001 417

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

May 7  
April, 1989

Then personally appeared the above-named JOHN W. RABBITI and acknowledged the foregoing to be his free act and deed as as aforesaid, before me,

EDWARD S ROBERTSON

[Signature]  
Notary Public  
My Commission Expires: 3/30/90

EXHIBIT I

TRUSTEE'S COMPENSATION

Resources for Responsible Site Management Inc.'s  
Trustee Fees for 1989 will be as follows:

Dr. Charles W. Powers \$225/hr.

Professional and Administrative  
Services of Resources for  
Responsible Management Inc. Personnel:

Partners and Senior                      Prevailing  
Associates                                  Normal Rate

Administrative                              \$60/hr.

Legal services of Gaston & Snow  
Personnel:

Eugene Berman, Esq.                      \$200/hr.

Other partners, associates              Prevailing  
and paralegal, if needed                  Normal Rate

No extra charge will be made for clerical time to support the performance of the above personnel. Any necessary personnel in addition to those described above and other out-of-pocket expenditures will be billed at cost.

The above specified rates for services to be reviewed annually.

INDUSTRI-PLEX SITE INTERIM CUSTODIAL TRUST

IN WITNESS WHEREOF, the Declarants have executed this instrument or have caused this instrument to be executed by persons authorized to sign on their behalf, under seal, as of the day and year first written above.

DECLARANT:

\_\_\_\_\_  
Company Name

By: \_\_\_\_\_  
Name:  
Title:  
Address:

Tax I.D. No.:

COMMONWEALTH OF MASSACHUSETTS

, ss

April , 1989

Then personally appeared the above-named \_\_\_\_\_  
and acknowledged the foregoing to be his free act and deed as  
\_\_\_\_\_ as aforesaid, before me,

\_\_\_\_\_  
Notary Public  
My Commission Expires:



## EXHIBIT I TO THE INTERIM CUSTODIAL TRUST

### THE INDUSTRI-PLEX SITE LONG-TERM CUSTODIAL TRUST

I, \_\_\_\_\_, duly authorized officer of \_\_\_\_\_, which is the duly appointed Trustee of the Industri-Plex Site Interim Custodial Trust (the "Interim Custodial Trust"), pursuant to the authority granted to the Trustee of the Interim Custodial Trust, hereby declare \_\_\_\_\_ to be Trustee (the "Trustee"), to hold all property hereafter transferred to the Trustee subject to the following provisions.

#### ARTICLE I

##### DEFINITIONS

1.01 Capitalized Terms. For all purposes of this Trust, the following terms shall have the meanings set forth below:

"Consent Decree" means the Consent Decree in United States of America v. Stauffer Chemical Company, et al., Civil Action No. 89-0195-MC (D. Mass).

"Custodial Trust Estate" shall mean all right, title and interest of the Trustee in and to the Custodial Trust Fund and the Custodial Trust Property as hereinafter defined, including without limitation any income or profits derived therefrom.

"Custodial Trust Fund" shall mean any and all personal property of this Trust, including without limitation funds and other liquid assets contributed by the Interim Custodial Trustee, or any other person or entity and any interest or other income

earned thereon, but shall not include any Custodial Trust Property as hereinafter defined.

"Custodial Trust Property" shall mean any and all real property contributed to this Trust, but shall not include the proceeds of any sale or other disposition of such real property or any other personal property held by the Trustee.

"Interim Custodial Trustee" shall mean Resources for Responsible Site Management, Inc. ("RRSM") or its successor, as the then serving trustee of the Interim Custodial Trust.

"Registry" as used herein shall mean the Middlesex County (Massachusetts) Southern District Registry of Deeds; provided that if this Trust is recorded or filed for registration in any other public office within or without the Commonwealth of Massachusetts, any person dealing with portions or all of the Trust Estate as to which documents or instruments are recorded or filed for registration in such other public office in order to constitute notice to persons not parties thereto may rely on the state of the record with respect to this Trust in such other public office, and with respect to such portions or all of the Trust Estate the term "Registry" as used herein shall mean such other public office.

1.02 Incorporation of Certain Definitions. Capitalized terms used herein without definition shall have the meanings ascribed to them in the Consent Decree.

## ARTICLE II

### NAME AND PURPOSE OF TRUST

2.01 Name. This Trust shall be known as "The Industri-Plex Site Long-Term Custodial Trust" (hereinafter sometimes referred to as "this Trust").

2.02 Trust Purpose. The purpose of this Trust is to receive, hold and manage property transferred to it pursuant to the provisions of the Consent Decree, including compliance with the Institutional Controls of the Consent Decree, for the benefit and protection of the public who, along with the qualified organizations described in Article IV, shall be the sole beneficiaries of this Trust.

This Trust is created and shall be operated exclusively for charitable, religious, scientific, literary, or educational purposes, and its property and net income shall be devoted exclusively to such purposes, either directly or by contributions to organizations duly authorized to carry on charitable, religious, scientific, literary or educational activities; provided however, that no part of this Trust and/or its net earnings shall inure to the benefit of any private shareholder or individual and no part of the direct or indirect activities of this Trust shall consist of carrying on propaganda, or otherwise attempting to influence legislation, or of participating in, or intervening in (including, without limitation, the publication or distribution of statements) any political campaign on behalf of (or in opposition to) any candidate for public office. Notwithstanding any other

provision of this instrument, this Trust shall not conduct any activities not permitted by an organization exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code and Regulations thereunder as they now exist or as they may be amended from time to time, or by an organization contributions to which are deductible for federal income, gift and estate tax purposes under the provisions of such Code and Regulations thereunder as they now exist or as they may be amended from time to time.

### ARTICLE III

#### DUTIES OF THE TRUSTEE

3.01 Custodial Trust Property. The Trustee shall:

(a) receive and hold title to the real property transferred to this Trust;

(b) inaugurate and comply with the Institutional Controls on all Custodial Trust Property in accordance with Section X of the Consent Decree;

(c) provide access to such property in accordance with Section XV A. of the Consent Decree to permit implementation of any aspect of the Work or of the Long-term O & M Plan as described in the Consent Decree;

(d) employ all reasonable measures to prevent unauthorized entry upon or use of the Custodial Trust Property in its possession or control;

(e) insure the Custodial Trust Property against loss due to casualty or third party liability; and

(f) comply with all relevant Sections of the Consent Decree.

3.02 Custodial Trust Fund. The Trustee shall apply all of the Custodial Trust Fund toward the duties of Section 3.01 for as long as the Custodial Trust Property remains in its possession.

3.03 Application for Tax Abatements. The Trustee shall make all necessary applications for abatements from property taxation and provide such additional information to the City of Woburn, Massachusetts (the "City") as is necessary to insure that the City does assess and continues to assess the Custodial Trust Property at zero or at such other value or in such other manner or form that no real estate tax liability is imposed on the Custodial Trust Property.

#### ARTICLE IV

##### DISTRIBUTION OF TRUST PROPERTY AND

##### TERMINATION OF TRUST

4.01 Distribution of Trust Property. The Trustee may, at any time and at its discretion, transfer any one or more portions of the Custodial Trust Property to the City, the Commonwealth of Massachusetts, the United States of America or any other appropriate governmental unit, provided that the transferee agrees to accept the transfer of such Custodial Trust Property.

Notwithstanding the foregoing, the trustee is authorized to make such a transfer only to the extent that it is not inconsistent with the provisions of Sections 2.02 and 4.02.

4.02 At such time as all of the Custodial Trust Property has been transferred as provided in Section 4.01 and the Trustee has complied with all of the relevant provisions of the Consent Decree, this Trust shall terminate and the balance of the Custodial Trust Fund shall be distributed exclusively for such charitable, religious, scientific, literary or educational purposes as the Trustee may determine to be appropriate; provided that it shall be distributed exclusively for such purposes to such one or more organizations, or in such proportions among them, as the Trustee deems appropriate; and provided further that such distributions shall be made only to organizations which have the status of being exempt from taxation under the provisions of the Internal Revenue Code and Regulations thereunder as they exist at the time of each such distribution and only to organizations a gift to which would be deductible for income, gift and estate tax purposes under the provisions of the Internal Revenue Code and Regulations thereunder as they exist at the time of each such distribution. Notwithstanding anything else appearing therein, the powers of the Trustee shall be construed and exercised so as not to jeopardize the status of this Trust as an entity exempt from taxation under the provisions of the Internal Revenue Code and Regulations thereunder as they now exist and as they shall be amended from time to time. Consistent with the foregoing, and without imposing any obligation on the Trustee, it is hoped that the Trustee will make distributions to organizations which are

concerned with the preservation and/or clean-up of the environment.

## ARTICLE V

### RETENTION OF PROFESSIONAL AND OTHER SERVICES

5.01 Accountants. The Trustee may employ an independent certified public accounting firm to perform auditing and accounting services for this Trust (the "Accountants"). Such services may include, without limitation, (a) the preparation of reports; (b) the auditing of invoices; and (c) the provision of advice to the Trustee as to the payment of the audited invoices and claims.

5.02 Retention and Removal of Other Professional and Employee Services. The Trustee shall employ such attorneys, accountants, custodians, engineers, surveyors, contractors, clerks, investment counsel and agents or employees (including any firm or entity in which it may have an interest); lease from others, furnish, operate and maintain office space; and make such payments therefor as it shall deem reasonable for the implementation of the purposes of this Trust.

## ARTICLE VI

### TRUSTEE'S POWERS

The Trustee shall have, in addition to those powers specified elsewhere herein and the general powers of the office, the following powers, which powers shall be exercised in a fiduciary capacity, in the best interest of this Trust and in the sole discretion of the Trustee unless otherwise specified:

6.01 Payment of Expenses of Administration. To incur and pay any and all charges, taxes and expenses upon or connected with this Trust in the discharge of its fiduciary obligations, provided, however, that the Trustee shall not be required to pay any taxes to the City of Woburn.

6.02 Retention of Property. To hold and retain all or any part of the Custodial Trust Property and the Custodial Trust Fund in the form in which the same may be at the time of the receipt by the Trustee, as long as it shall deem advisable, notwithstanding that the same may not be authorized by the laws of any state or rules of any court for the investment of trust funds, and without any liability for any loss of principal or income by reason of such retention.

6.03 Preservation of Principal. Notwithstanding any other provision in this Trust, to at all times hold, manage and invest the assets of the Custodial Trust Fund in a manner designed to preserve the principal of the Custodial Trust Fund and, consistent with preservation of the principal of the Custodial Trust Fund, to maximize the principal and income derived therefrom, for the purposes of this Trust.

6.04 Investment of Trust Fund. To invest and reinvest all or any part of the Custodial Trust Fund (including any undistributed income therefrom) as the Trustee deems advisable, except that such investments shall be limited to investments in United States direct obligations, obligations guaranteed by agencies of the United States government, common trust funds or mutual funds



that invest in United States direct or guaranteed obligations, bank certificates of deposit to the extent such are insured by the federal government. In all cases, however, the total investments must be sufficiently liquid to enable the Trustee to fulfill the purposes of this Trust and to satisfy obligations as they become due. Nothing in this Section 6.04 shall be construed as authorizing the Trustee to carry on any business or to divide the gains therefrom. The sole purpose of this Section 6.04 is to authorize the investment of the Custodial Trust Fund or any part thereof as may be reasonably prudent pending use of the Custodial Trust Fund for the purposes of this Trust.

6.05 Management of Trust Estate. Without any business objective, and as may be incidental or advisable in connection with the purposes of this Trust as set forth in Section 2.02, to sell, exchange, partition or otherwise dispose of all or any part of the Custodial Trust Fund at public or private sale, without prior application to or approval by or order of any court, upon such terms and in such manner and at such prices as it shall determine.

6.06 Extension of Obligations and Negotiation of Claims. To renew or extend the time of payment of any obligations, secured or unsecured, payable to or by this Trust, for as long a period or periods of time and on such terms as the Trustee shall determine; and to adjust, settle, compromise, abandon, contest and arbitrate claims or demands in favor of or against this

Trust, including claims for taxes, upon such terms as it deems advisable.

6.07 Location of Assets. To hold any property belonging to the Trust at any place in the United States.

6.08 Authority to Represent Trust Before Agencies. To represent this Trust with regard to any matter concerning this Trust or its purpose before any federal, state or local agency or authority which has authority or attempts to exercise authority over any matter which concerns this Trust, and to invoke the dispute resolution procedure pursuant to Section XXII of the Consent Decree.

6.09 Powers Regarding Real Estate. Subject to the provisions of the Consent Decree and other provisions of this Trust, the Trustee may retain all or any part of any real estate (or interest therein) that becomes part of the trust property (the "real estate") for such period as the Trustee deems advisable and shall pay all taxes and assessments on the real estate (provided, however, that the Trustee shall not be required to make such payments to the City of Woburn), maintain it and insure it against risks in such amounts as the Trustee deems advisable and in such amounts as are approved by EPA and the Commonwealth (which approval shall not be unreasonably withheld). In addition to all other powers conferred by law or other provisions of this Trust, and also subject to the provisions of the Consent Decree and the other provisions of this Trust, the Trustee shall have

the following powers which may be exercised without court approval:

(a) To grant options and make other contracts concerning the real estate (whether or not extending beyond the term of any trust);

(b) To subdivide the real estate and dedicate streets or other ways for public use with or without compensation;

(c) To impose easements or other restrictions; and donate the real estate to charitable or public uses;

(d) To establish reserves for depreciation, taxes, insurance or other purposes as the Trustee deems advisable;

(e) To execute and deliver all appropriate instruments; and discharge mortgages of record;

(f) To record in the appropriate Registry of Deeds any instrument, including any certificate acknowledged by the Trustee as to any fact concerning the real estate; and any person without actual knowledge to the contrary may rely conclusively on the genuineness of any such instrument and on the correctness of any such certificate.

No person dealing with the real estate shall be required to see to the application of any money or property delivered to the Trustee, or to see that the terms and conditions of this Trust have been complied with. Every instrument executed or action taken by the person or entity appearing to be the Trustee shall be conclusive evidence that this Trust was in full force and effect when the instrument was delivered or the action was taken; that such person or entity was the Trustee; and that such instrument or action was valid and legally binding.

6.10 Powers of Trustee to Continue Until Final Distribution. To exercise any of such powers until such time as the entire principal of, and income from, the Custodial Trust Fund

has been actually distributed by the Trustee and all Custodial Trust Property has been sold or otherwise disposed of.

6.11 Reliance of Purchasers and Others. No license of court shall be requisite to the validity of any transaction entered into by the Trustee. No purchaser, transferee, or lender shall be under any obligation to see to the application of the purchase money or of any money or property loaned or delivered to any Trustee or to see that the terms and conditions of this Trust have been complied with. Every agreement, deed, or other instrument or document executed or action taken by the Trustee or any successor or additional Trustee, shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of the delivery thereof or of the taking of such action this Trust was in full force and effect and that such instrument or document or action is valid, binding and legally enforceable. Any person dealing with the Trust Estate or the Trustee may always rely without inquiry on a certificate signed as aforesaid as to who is the Trustee or Trustees or the beneficiaries hereunder, or as to the authority of the Trustee to act, or as to the existence or nonexistence of any fact or facts which constitute conditions precedent to acts by the Trustee or which are in any other manner germane to the affairs of the Trust.

## **ARTICLE VII**

### **ACCOUNTS**

7.01 Annual Accounts. By each March 31, the Trustee shall render an account for the prior year ended December 31, accom-

panied by a report of the Accountants stating that an audit of such accounts has been made in accordance with generally accepted auditing standards, stating the opinion of such Accountants in respect of the accounts and the accounting principles and practices reflected therein and as to the consistency of the application of the accounting principles, and identifying any matters to which such Accountants take exception and stating, to the extent practicable, the effect of such exception of such accounts. Each account and report shall be rendered to the Commonwealth of Massachusetts, Public Charities Division of the Attorney General's Office.

7.02 Copies of Accounts. The Trustee shall provide copies of the annual accounts and Accountant's statement to any person or entity who requests them in writing. The Trustee shall be entitled to recover from any such persons or entities (other than EPA or the Commonwealth) the cost of providing copies of such accounts and statements, and the trustee shall have no obligation to deliver such copies until such person or entity has reimbursed the Trustee for such costs.

#### ARTICLE VIII

##### CONDITIONS OF TRUSTEE'S OBLIGATIONS

The Trustee accepts the Trust imposed upon it but only upon and subject to the following express terms and conditions:

8.01 Limitation of Liability. In no event shall the Trustee be liable except for its negligence, gross negligence or willful acts or omissions in relation to its duties hereunder.

8.02 Reliance on Documentation. The Trustee shall be protected in acting in accordance with the provisions of this Trust upon any notice, requisition, request, consent, certificate, order, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and to have been signed or sent by the proper person or persons.

8.03 Right to Demand Documentation. Notwithstanding anything else in this Trust, in the administration of the Custodial Trust Fund, the Trustee shall have the right, but shall not be required, to demand before the disbursement of any cash or in respect of any action whatsoever within the purview of this Trust, any showings, certificates, opinions, appraisals, or other information, or action or evidence thereof, in addition to that required by the terms hereof which the Trustee reasonably believes to be necessary or desirable.

8.04 Trustee's Compensation. The Trustee shall be compensated for its services hereunder in accordance with Exhibit A attached hereto.

8.05 Limitation on Financial Liability. No provision of this Trust shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties as Trustee hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it, nor to take any action pursuant to this Trust,

which in the judgment of the Trustee may reasonably conflict with any rule of law or with the terms of this Trust.

## ARTICLE IX

### SUCCESSOR TRUSTEES

9.01 Resignation of Trustee. Any Trustee may resign by giving not less than 60 days written notice to the then Attorney General of the Commonwealth of Massachusetts (the "Attorney General") and the Assistant Attorney General of the United States (Land & Natural Resources), and such resignation shall take effect upon the day specified in such notice, unless a successor Trustee shall have been sooner appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment by a successor Trustee. If any individual Trustee becomes mentally or physically unable to serve, a certificate so stating from such Trustee's then attending physician shall constitute such Trustee's resignation. If any Trustee shall be dissolved or in the course of dissolution or liquidation, or otherwise unable to continue to act as Trustee, as finally determined by the Attorney General, a certificate so stating from the Attorney General shall constitute such Trustee's resignation. The Trustee's resignation shall be recorded with the Registry immediately prior to the recording of the successor Trustee's acceptance or upon the effective date of resignation, whichever is earlier.

9.02 Appointment of Successor Trustee. If RRSB or any successor Trustee ceases to serve as Trustee a successor trustee may

be appointed by the Attorney General by an instrument in writing, signed by the Attorney General, and delivered to the successor Trustee. In the event that no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article within 60 days after vacancy shall have occurred, any interested person (including the United States) and/or any retiring Trustee may apply to any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice, if any, as it shall deem proper, prescribe or appoint a successor Trustee. Each successor Trustee shall qualify upon written acceptance attached hereto and recorded with the Registry and thereafter shall have the same powers, immunities and discretions as the original Trustee.

9.03 Transfer to Successor Trustee. Upon any successor Trustee's qualification, as provided in 9.02, such successor Trustee, without any further act, deed, or conveyance, shall become fully vested with all the estates, rights, powers, trusts, duties and other obligations hereunder of its predecessor; but such predecessor shall nevertheless, upon written request of the successor Trustee, execute and deliver an instrument transferring to such successor Trustee all the estates, rights, powers, and trusts of such predecessor; and every predecessor Trustee shall deliver all securities and money held by it to its successor; provided, however, that before any such delivery is required or made, all reasonable, customary and legally accrued fees,



advances and expenses of any such predecessor Trustee shall be paid in full.

9.04 Merger or Consolidation of Trustee. Any corporation or association into which the Trustee or any successor to it may be merged or converted, or with which it or any successor to it may be consolidated, or any corporation or association resulting from any merger, conversion, or consolidation to which the Trustee or any successor to it shall be a party, shall be a successor Trustee under this Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, notwithstanding anything to the contrary herein.

## ARTICLE X

### MISCELLANEOUS

10.01 Particular Words. Any word contained in the text of this Trust shall be read as a singular or plural and a masculine, feminine or neuter as may be applicable or permissible in the particular context. Unless otherwise specifically stated the word "person" shall be taken to mean and include an individual, partnership, association, company or corporation.

10.02 Severability of Provisions. If any provision of this Trust or its application to any person or entity or in any circumstances shall be held to be invalid and unenforceable, the application of such provision to persons or entities and in circumstances other than those as to which it is invalid or unenforceable, and the other provisions of this Trust shall not be affected by such invalidity or unenforceability.

10.03 Governing Jurisdiction. This Trust shall be enforceable in the United States District Court for the District of Massachusetts or any other court of competent jurisdiction in the Commonwealth of Massachusetts. The validity, interpretation and performance of this Trust shall be governed by the laws of the Commonwealth of Massachusetts, subject to the provisions of Section IX (C) of the Consent Decree relating to liability to third parties.

10.04 Tax-Exempt Status. Notwithstanding any other provision of this Trust, it is intended that this Trust qualify as a tax-exempt organization under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding provisions of subsequent federal tax laws, and the Trustee is specifically precluded from engaging in any activity which would jeopardize such qualification, including without limitation the following:

(a) The Trust and the Trustee are prohibited from engaging in any act of self-dealing (as defined in Section 4941(d) of the Internal Revenue Code);

(b) The Trust and the Trustee are prohibited from retaining any excess business holdings (as defined in Section 4943(c) of the Internal Revenue Code);

(c) The Trust and the Trustee are prohibited from making any investments in such manner as to subject the trust to tax under Section 4944 of the Internal Revenue Code;

(d) The Trust and the Trustees are prohibited from making any taxable expenditures (as defined in Section 4945(d) of the Internal Revenue Code).

In addition, the Trust and the Trustee are required to distribute its income for each taxable year at such time and in such manner as not to subject the trust to tax under Section 4942 of the Internal Revenue Code.

References to the Internal Revenue Code refer to the Code as it now exists and as it may be amended from time to time.

10.05 Modification. This Trust may be modified only by order of the United States Court for the District of Massachusetts and only to the extent that such modification does not change or inhibit the purpose of this Trust as set forth in Section 2.02 or allow for distributions to any entity which is not a qualified organization as defined in Section 4.02.

10.06 Construction of Terms. In the event of any ambiguity or contradiction in the terms of this Trust, such terms shall be construed so as to conform to the provisions of the Consent Decree, where applicable, and so as to fulfill the purposes of this Trust.

IN WITNESS WHEREOF, \_\_\_\_\_, by its duly  
authorized officer, hereby sets its hand and seal as Declarant  
and \_\_\_\_\_, by its duly authorized officer, hereby  
sets its hand and seal as Trustee as of this \_\_\_\_ day of  
\_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_

Name:

Title: